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JAN 20 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE CLERK

January 20, 2000

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 - 12th Street, SW - Room A325
Washington, DC 20554

Re: Federal-State Joint Board on Universal
Service: Promoting Deployment and
Subscribership in Unserved and Underserved
Areas, Including Tribal and Insular Areas,
CC Docket No. 96-45

Dear Ms. Salas:

Herewith transmitted, on behalf of United States Cellular Corporation, are an original and four copies of its "Motion To File Comments One Day Late" and "Reply Comments" in the above-captioned proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Peter M. Connolly

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Federal-State Joint)
Board on Universal) CC Docket No. 96-45
Service Promoting)
Deployment and Subscribership)
in Unserved and Underserved)
Areas, Including Tribal and)
Insular Areas)
_____)

MOTION TO FILE COMMENTS ONE DAY LATE

United States Cellular Corporation ("USCC") hereby request permission to file the attached "Reply Comments" one day after the would otherwise have been due, on January 19, 2000.

An illness on the part of corporate counsel reviewing the comments has prevented their timely filing. However, no party will be prejudiced by their being filed one day late, as the pleading cycle is now completed.

Accordingly, for the foregoing reasons, we ask that this motion be granted.

Respectfully submitted

UNITED STATES CELLULAR CORPORATION

By:

Peter M. Connolly
Peter M. Connolly
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1150 Connecticut Ave., N.W.
Washington, D.C. 20036

January 20, 2000

Its Attorneys

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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REPLY COMMENTS OF
UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation ("USCC") hereby files its Reply Comments concerning the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceeding.¹

In its comments on the FNPRM, USCC supported a variety of service-specific rule changes in the wireless services designed to improve service to Indian tribal lands and other unserved and underserved areas.

However, USCC has noted that unless the FCC's universal service support structures are modified to reflect the distinctive characteristics and regulatory status of wireless carriers that the

¹ In the Matter of Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas Including Tribal and Insular Areas, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 99-204, released September 3, 1999 ("FNPRM")

problem of lack of service on Indian tribal lands and other underserved areas identified by the FNPRM will remain unsolved.

Neither FNPRM nor the "universal service" orders in this docket released in November² deal adequately with wireless carriers or answer crucial questions about the operation of the universal service fund. The FCC's failure to answer those questions has contributed to the virtual exclusion of wireless carriers from participation in services supported by the "high cost" portion of the universal service fund.³

As USCC and others have repeatedly pointed out, what is needed in this proceeding, and in the docket of which this proceeding is a part, is a reform of universal service structure to provide for support to the lowest cost carriers wishing to serve underserved areas, whether they are wireline or wireless in nature.

Also, USCC has suggested that if the FCC determines that a unique service problem exists on tribal lands, then an adequate

² See, In the matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, released November 2, 1999 ("High Cost Order"); In the Matter of Federal-State Joint Board on Universal Service; Forward Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, FCC 99-304, released November 2, 1999 ("Inputs Order").

³ Undersigned counsel is advised by officials of the Universal Service Administrative Company ("USAC"), that only one wireless carrier will receive support in 2000 for service provided as of December, 1998, and that is a carrier serving Puerto Rico.

percentage of universal service funds should be set aside for such lands and wireline and wireless companies should compete, pursuant to agreements between the federal government and the Indian tribes, to provide improved service.

I. Wireless Participation Is Essential
 To the Improvement of Service in
 Unserved and Underserved Areas

The comments filed demonstrate both the extent and complexity of the problem of improving service to unserved and underserved portions of the United States and the difficulty and expense of solving it under present universal service structures.

Low wireline telephone subscribership is largely a function of poverty and geographic isolation. Extreme poverty, such as that found on some Indian reservations, can make telephone service unavailable and geographic isolation can drive the costs of providing traditional telephone service to prohibitive levels.⁴

The essential question before the FCC in this proceeding is "How best may this situation be improved?"

For many wireline telephone companies and trade associations, the answer, as given in their comments, is clear, namely more high

⁴ See, e.g. Comments of the State of Alaska ("Alaska Comments"), p. 6; Comments of the Rural Utilities Service ("RUS Comments"), p. 13; Comments of National Telephone Cooperative Association ("NCTA Comments") pp. 5-6; Comments of Virgin Island Telephone Company ("VITELCO Comments") pp. 1-10. See, Comments of Smith Bagley, Inc. ("Bagley Comments"), pp. 3-4; Comments of Western Wireless Corporation ("Western Wireless Comments") pp. 3-4; Comments of National Rural Telecom Association and OPASTCO ("NRTA/OPASTCO Comments") p. 7-8.

cost support under the present, essentially wireline-only, structures. Among the measures they recommend are an expansion of "Lifeline" and "Linkup" support, lifting the present "cap" on interim high cost "loop" support, and ending the FCC's practice of limiting the support available to LECs acquiring new "telephone exchanges" to that received by the selling carrier.⁵

USCC does not necessarily oppose these changes, which may be essential to serving unserved areas in certain parts of the country under specific circumstances.

But we would point out that unless such modifications are coupled with a reform of universal service structures to include wireless carriers, one of their primary effects will inevitably be to increase the overall level of high cost support payments and thus a corresponding increase in carrier and ultimately subscriber contributions to the federal USF fund.

At present, when "implicit" support for ILECs has only begun to be removed from federal support structures, "explicit" high cost and low income support is running at approximately \$627 million per quarter, out of a total quarterly support requirement of \$1.181 billion.⁶ All carriers, including wireless carriers, now must make

⁵ See, e.g. NRTA/OPASTCO Comments pp. 7-10; NTCA Comments, pp. 16-20.

⁶ See Public Notice, "Proposed First Quarter 2000 Universal Service Contribution Factors," DA 99-2780, released December 20, 1999.

monthly universal service contributions amounting to approximately 5.9% of their interstate billed revenues.

If "Lifeline" and "Linkup" funding are increased, the USF "cap" is lifted, and rural ILECs may obtain increased high cost support for the exchanges they acquire from RBOCs and if the current support structures remain in place, the present contribution percentage can only increase, perhaps to politically and economically unsustainable levels.⁷

We would submit that the only way to improve service to unserved and underserved areas without having to require such increases in USF contribution levels is to bring wireless carriers into the "mix" of those carriers eligible to provide supported services, thus driving down their costs.

Sometimes, for example, it would simply make more sense to use a wireless application, whether "fixed" or mobile, to bring telecommunications service to a remote household than to spend the \$40,000 or so which it may take to connect that household to the PSTN via landline.

But in order for such a reasonable outcome to occur, when appropriate, two things have to happen, neither of which has thus far. First, wireless carriers must be designated as Eligible Telecommunications Carriers ("ETCs") and second, the federal high

⁷ The overall costs to wireless carriers will also be increased by contributions to state universal service funds, which are now being created across the country.

cost support structure must be reformed so that it takes into account the nature and regulatory status of such wireless carriers.

II. The FCC Can and Should Designate
ETCs For Tribal Lands and The State
Should Expedite Their Review of
Wireless ETC Petitions

The correct reading of Section 214(e)(6) of the Communications Act⁸ was perhaps the most controversial subject in the comments filed on December 17, 1999.

USCC agrees with the points made concerning Section 214(e)(6) by CTIA.⁹ It is clear that Section 214 (e)(6) does provide the FCC with authority to grant ETC status to a requesting wireless carrier when either a state has renounced its jurisdiction over wireless carriers for the purpose of designating ETCs or when the service area for which the wireless carrier seeks ETC designation cannot be regulated by the states. The point of the relevant 1997 amendment the Communications Act was to deal with the problem that carriers serving tribal lands were sometimes excluded from ETC status

⁸ Section 214(e)(6) provides, in relevant part:

"In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and state law."

⁹ Comments of Cellular Telephone Industry Association ("CTIA Comments"), pp. 4-6.

because the states could not regulate them. Thus, the statute now provides for ETC designation by the FCC for such carriers.

Thus, it would seem clear that the FCC can designate wireless carriers as ETCs on Indian tribal lands and should do so.

USCC is aware that the issues of FCC designation of ETCs in the context of state renunciation of jurisdiction¹⁰ and on tribal lands generally¹¹ are now pending before the Commission. We urge rapid and positive decisions in those proceedings, in conjunction with the FCC's actions in this docket.

As USCC has argued, and other parties with differing points of view have also noted,¹² the FCC must act to resolve the many open issues which have caused confusion and uncertainty about ETC designation and ETC responsibilities. The question of when the FCC may designate ETCs is fundamental. We ask that the Commission deal with it now.

¹⁰ See, Western Wireless Corporation Petitions For Designation as an Eligible Telecommunications Carrier to Provide Services Eligible For Universal Services Support in Wyoming, CC Docket 96-45, Public Notice, DA 99-2511, released November 22, 1999.

¹¹ See, Western Wireless Corporation Petitions For Designation as an Eligible Telecommunications Carrier and For Related Waivers To Provide Services Eligible For Universal Service Support To Crow Reservation Montana, CC Docket No. 96-45, Public Notice, DA 99-1847 released September 10, 1999; Petition of Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, DA 99-1331, released July 6, 1999.

¹² See, e.g. NRTA/OPASTCO Comments, p. 10.

And, we would note one additional benefit of FCC clarification of the jurisdictional issues, namely that such action may spur the states to act on the many wireless ETC petitions now before them. State slowness to act on such petitions may reflect uncertainty about the states' powers, pursuant to Section 332 of the Communications Act, to regulate wireless carriers for ETC designation or other purposes. Once the FCC clarifies the ETC regulatory structure the states will be able to move forward to designate wireless ETCs with confidence that their rulings are sustainable.

Another crucial factor in delaying state action, which will be discussed further below, is that the structure of present universal service support, as reflected in Part 54 of the FCC's rules, grows directly out of federal regulation of wireline telephone companies and thus the states may not understand the methodology under which wireless carriers will receive high cost support.

Given that jurisdictional and regulatory uncertainty, many of the states have held back from ruling on wireless petitions and many wireless carriers may have also held back from filing such petitions, until they can see clearly what the regulatory structure will be.

It is now up to the FCC to make the necessary clarifying rulings, so that the competitive provision of supported service can begin.

III. The FCC Must Also Reconfigure Its Universal Service Rules To Make ETC Designation Meaningful

USCC has repeatedly argued that while state designation of wireless carriers as ETCs is necessary to the reform of universal service support structures it is not sufficient as the rules embodying those structures can be interpreted to undermine wireless participation.

This point was underscored with considerable force in the comments of Bell Atlantic Mobile Systems ("BAMS"). BAMS had the excellent idea of demonstrating the wireline bias of the current rules by listing the specific Part 54 requirements which will have to be clarified or changed if wireless carriers are going to be able to participate meaningfully in the system.¹³ What BAMS calls the "square peg/round hole" problem in relation to those rules is probably the most important reason why the states have been, in the main, unwilling to designate wireless carriers as ETCs, especially for rural areas.¹⁴

If the rules listed by BAMS are rewritten to eliminate their wireline bias and if wireless carriers are brought into the system without having to alter their essential regulatory characteristics,

¹³ BAMS Comments, pp. 20-26.

¹⁴ See, e.g. "Western Wireless Corporation Designated As Eligible Carrier," Case No. PN - 1564-98-428, State of North Dakota Public Service Commission, released December 16, 1999, paragraphs 53-54.

then a high cost support system can be devised which awards support to those carriers, which, in a given set of circumstances, will provide the best service at the lowest cost.

That is the goal toward which the FCC should strive. What wireless carriers want and should receive is nothing more and nothing less than a level playing field upon which to compete. The system should allow such carriers to demonstrate that they can provide service more efficiently than their wireline, satellite, or other competitors and their competitors should have the same rights.

We ask that the FCC act now to make that vision a reality.

Respectfully submitted

UNITED STATES CELLULAR CORPORATION

By: 

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January 20, 2000

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